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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,346	07/24/2001	Jian Ni	PF199D2	4955
22195	7590	04/09/2004	EXAMINER	
HUMAN GENOME SCIENCES INC INTELLECTUAL PROPERTY DEPT. 14200 SHADY GROVE ROAD ROCKVILLE, MD 20850			MERTZ, PREMA MARIA	
			ART UNIT	PAPER NUMBER
			1646	

DATE MAILED: 04/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/911,346	<b>Applicant(s)</b> NI ET AL.	
	<b>Examiner</b> Prema M Mertz	<b>Art Unit</b> 1646	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☒ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-20, 29-31, 34-52, 61, 62, 65-83, 92-94, 97-115 and 124-127.

Claim(s) withdrawn from consideration: 21-28, 58-60, 84-91, 95, 96 and 116-123.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

*Prema Mertz*  
Prema M Mertz  
Primary Examiner  
Art Unit: 1646

Continuation of 5. does NOT place the application in condition for allowance because: Applicants argue that the declaration by Dr. Roschke under 37 CFR 1.132 defines an antibody that "specifically binds" as "an antibody that is specific for one member of a protein family that does not appreciably bind i.e. cross-react with other members of that family irrespective of the level of sequence identity among family members". However, contrary to this definition, the position of the USPTO is that "specifically binds" is defined as binding to one particular protein without binding to a structurally unrelated protein. Applicants definition of "specifically binds" is repugnant to the art and is not an art recognized definition. Furthermore, an antibody that specifically binds is one that binds to any epitope in a particular protein and also encompasses antibody binding to any epitope in a structurally related protein. Since the antibody of the prior art binds to NKEF A and B which are structurally related proteins to the present NKEF C protein, the antibody of the prior art meets the limitations of the instant claims. The declaration by Viktor Roschke under 37 CFR 1.132 is non-persuasive in obviating the 35 USC 102 and 35 USC 103 rejections of record.